

**TENNESSEE BOARD OF PHARMACY
JANUARY 20 – 21, 2004
ROOM 160 – DAVY CROCKETT TOWER
NASHVILLE, TN**

BOARD MEMBERS PRESENT:

Robert Shutt, President
Reggie Dilliard, Vice President
Barbara McAndrew, Public Member
Julie Frazier, Member
Sheila Mitchell, Member
James R. Mitchell, Member
Forrest Parmley, Member

STAFF PRESENT:

Kendall Lynch, Director
Alison Zane, Legal Counsel
Martha Agee, Board Administrator
Terrence Cannada, Pharmacist Investigator
Harry Fuqua, Pharmacist Investigator
Richard Hadden, Pharmacist Investigator
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, January 20, 2004, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:00 a.m. CST by Dr. Robert Shutt, President. Director Kendall Lynch introduced two (2) University of Tennessee pharmacy students, Ms. Clara Musick and Ms. Diana Hargis and Ms. Rhonda Barnes, who is attending Mercer University.

APPROVAL OF THE MINUTES

The **minutes of the November 18, 2003**, board meeting were presented and reviewed by the Board. Dr. Sheila Mitchell motioned to **approve the minutes**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

#1999000222

ECKERD DRUGS

INFORMAL CONFERENCE

Director Kendall Lynch informed the Board members that they had requested an appearance of Eckerd's Loss Prevention personnel at the November 18, 2003 board meeting relevant to the loss of 36,000 dosages of Hydrocodone products from three (3) pharmacies. Mr. Brian Varns, district manager with Eckerd and legal counsel, Mr. Thomas Lops were in attendance. Dr. Forrest Parmley recused himself. Mr. Varns stated Eckerd's Loss Prevention interviewed all the pharmacists, floaters and technicians/clerks at the three (3)

Tennessee Board of Pharmacy

January 20 – 21, 2004

pharmacies in Manchester, Shelbyville and Murfreesboro where the shortages occurred. Eckerd has no security concerns. An inventory was conducted at each of the pharmacies after the pharmacy closed. Mr. Varns stated no urine screens were conducted on any of the employees. Dr. Albert Johnson requested to submit to a urine screen but was not allowed to do so. Mr. Varns also stated that cameras were set up in the front of the pharmacy but not over the Hydrocodone section. Counsel, Thomas Lops advised the Board when the new computer system is installed, Eckerd will be able to do perpetual inventories. Mr. Lops stated a variance report is completed by the corporate office each month. Dr. Reggie Dilliard suggested a Loss Prevention Supervisor needs to be hired for this area of the state. Ms. Alison Zane, legal counsel, recommended to the Board that Eckerd send the Board a monitoring report. Dr. Reggie Dilliard motioned that **Eckerd appear before the Board in six (6) months (July '04) to discuss the efforts being made to control.** Dr. Julie Frazier seconded the motion. Dr. Forrest Parmley recused himself. The motion carried.

WAIVERS

JAMES MIKE BISHOP, DPH
107 Point Landing Court
Hermitage, TN 37076

Dr. James Bishop is requesting a waiver of Rule 1140-1.07 (3) (c) (3) relevant to the successful completion of the NAPLEX examination for reinstatement of his pharmacist license. Director Kendall Lynch stated Dr. Bishop received the board's letter in 1998 regarding the rule changes. In 1999, the Florida Board of Pharmacy was considering passing a law allowing reciprocity, which was finalized in 2001. Tennessee does not reciprocate with Florida. Dr. Bishop is currently practicing in Florida and maintains an active Florida license. Dr. Forrest Parmley motioned to **deny** the waiver request; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

STEVEN M. COBB, DPH
1259 Smithson Trail
Eads, TN 38028

Dr. Steven Cobb is requesting a waiver of Rule 1140-1.07 (3) (b) (5) (i) relevant to the one-hundred and sixty (160) internship hours required to reinstate his Tennessee pharmacist license. Dr. Cobb stated he is a non-

Tennessee Board of Pharmacy

January 20 – 21, 2004

practicing pharmacist employed as Vice-President of Operations for a licensed pharmaceutical repackaging facility. Dr. Reggie Dilliard motioned to **grant a partial waiver to extend the time period to six months** in which to obtain the intern hours. Mrs. Barbara McAndrew seconded the motion. Dr. Forrest Parmley and Dr. Robert Mitchell voted “no”. The motion carried.

IBRAHIM HAWASH, PHD

P. O. Box 928410

San Diego, CA 92192-8410

Mr. Ibrahim Hawash is requesting a waiver of Rule 1140-1-.05 which requires the FPGEC certification for graduates of foreign pharmacy colleges or schools of pharmacy. Mr. Hawash is a U.S. citizen and graduated from pharmacy school in Jordan. Mr. Hawash cannot qualify for the FPGEC since he was never licensed in Jordan. Dr. Sheila Mitchell motioned to **deny** the waiver request; seconded by Dr. Robert Mitchell. All were in favor and the motion carried. The Board did not have the authority to grant such a waiver.

FRED M. PITTS, II, DPH

201 Glenridge Place

Rossville, GA 30741

Dr. Fred Pitts is requesting a medical hardship waiver of Rule 1140-5-.01 (3) regarding the Live ACPE continuing education hours required for renewal. Dr. Pitts was involved in a car accident and had reconstruction surgery to his left shoulder. Dr. Julie Frazier motioned to **grant the waiver for the Live ACPE CE's, but to not grant the license until thirty hours (30) has been completed.** Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

KEN SMITH, DPH

MCFARLAND PHARMACY

MCFARLAND APOTHECARY

808 W. 4th North Street

Morristown, TN 37814

Dr. Ken Smith is requesting a waiver of Rule 1140-3-.14 (12) relevant to Dr. Mike Sigmon being the pharmacist in charge at more than one (1) location. Both pharmacies are located at the same address and are in

Tennessee Board of Pharmacy

January 20 – 21, 2004

the same building. McFarland Apothecary is a compounding and unit dose pharmacy. Dr. Sheila Mitchell motioned to **approve** the waiver; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

CONSENT ORDERS

**BARRY BATES, DPH
CRAIN'S PHARMACY
251 S. Washington
Ripley, TN 38063**

Legal counsel, Ms. Alison Zane, presented a Consent Order whereas Dr. Barry Bates was in violation of Rule 1140-2-.01. A prescription for Methylphenidate was mistakenly filled with Methadone. A civil penalty of \$250 was assessed. Dr. Julie Frazier motioned to **approve** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**WILLIAM CAVE, DPH
CAVE'S DRUG STORE
1328-B S. John B. Dennis Highway
Kingsport, TN 37660**

Ms. Alison Zane, legal counsel, presented a Consent Order whereas Dr. William Cave was in violation of Rule 1140-3-.11. During a routine compliance inspection, a pharmacist investigator found approximately thirty (30) out-of-date drugs on the pharmacy shelves. A civil penalty of \$250 was assessed. Dr. Julie Frazier motioned to **approve** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**JIMMY N. GURLEY, DPH
786 Roland Street
Memphis, TN 38104**

Ms. Alison Zane, legal counsel, presented a Consent Order with Probationary Conditions for Dr. Jimmy Gurley. In June, 2003, Dr. Gurley admitted to removing legend drugs from the pharmacy without paying for them. In July, 2001, Dr. Gurley filled a prescription for Phentermine without a prescription written by a health care professional; and in February, 2002, a prescription for 100 Ultram was filled without a prescription written by a

Tennessee Board of Pharmacy

January 20 – 21, 2004

health care professional. For the period of January 1, 2002 through June 26, 2002, a shortage of approximately 2,400 tablets of Ultram was revealed. On September 3, 2003, Dr. Gurley entered into the Impaired Professionals Program at Cresthaven in Memphis. Dr. Gurley was discharged from Cresthaven on November 3, 2003 with recommendations to attend a weekly aftercare program for six (6) months and attend ninety (90) A/A meetings within ninety (90) days. Dr. Gurley's license is placed on five year's probation from November 18, 2003 to November 18, 2008. Dr. Robert Mitchell motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

JEFFREY LAUDERMILK, DPH
4113 Old Niles Ferry Road
Maryville, TN 37801

Legal counsel, Ms. Alison Zane, presented a Consent Order whereas Dr. Jeffrey Laudermilk was in violation of Rule 1140-3-.01 (1) (a) for failure to counsel. Dr. Laudermilk was assessed a civil penalty of \$100. Dr. Sheila Mitchell motioned to **approve** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

RONALD MCCURDY, DPH
970 E. Valley Drive
Rossville, GA 30741

Ms. Alison Zane, legal counsel, stated Dr. Ronald McCurdy was arrested with a DUI after being involved in a minor traffic accident in May, 2001. Dr. McCurdy had in his possession a vial of Ativan injectable along with a syringe. An Informal Conference was recommended by counsel at the September 23 - 24, 2003 board meeting.

Dr. Julie Frazier, Dr. Ronald McCurdy, Director Kendall Lynch and counsel, Ms. Alison Zane met to discuss the complaint. Ms. Zane presented a Consent Order in which Dr. McCurdy agrees to place his license to engage in the practice of pharmacy in the State of Tennessee in "inactive" status. Dr. McCurdy shall personally appear before the Board to request the reactivation of his license. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

Tennessee Board of Pharmacy
January 20 – 21, 2004
SAMUEL H. SMITH, DPH
809 Coventry Road
Knoxville, TN 37923

Legal counsel, Ms. Alison Zane, presented a Consent Order for the indefinite suspension of Dr. Samuel Smith's pharmacist license, due to chemical dependency. Ms. Zane stated the term "indefinite suspension" will be used instead of the word "revoked". Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

JENNIFER G. SPIVEY, DPH
380 Holly Hills Lane
McKenzie, TN 38201

Legal counsel, Ms. Alison Zane, presented a Consent Order for the indefinite suspension of Dr. Jennifer Spivey's pharmacist license due to chemical dependency. Dr. Robert Mitchell motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

CHRISTY S. THOMPSON, DPH
107 Jones Street
Martin, TN 38237

Ms. Alison Zane, legal counsel, presented a Consent Order for the indefinite suspension of Dr. Christy Thompson's pharmacist license due to chemical dependency. Dr. Robert Mitchell motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

DELEGATE'S CERTIFICATE – NABP'S 100th ANNUAL MEETING
APRIL 24 – 27, 2004 - CHICAGO, ILLINOIS

The National Association of Boards of Pharmacy will host their 100th Annual Meeting on April 24 – 27, 2004 in Chicago, Illinois. Dr. Reggie Dilliard motioned to elect Dr. Robert Shutt as the official delegate for the Tennessee Board of Pharmacy; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried. Dr. Sheila Mitchell nominated to elect Dr. Reggie Dilliard as the alternate delegate; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

January 20 – 21, 2004

DRUG ENFORCEMENT ADMINISTRATION (DEA) PROPOSED RULE CHANGE “PREVENTING THE ACCUMULATION OF SURPLUS CONTROLLED SUBSTANCES AT LONG TERM CARE FACILITIES”

Director Kendall Lynch stated DEA is proposing a rule change to its existing regulation to allow, where State laws permit, for pharmacy installation of automated drug dispensing systems (ADDS), which would allow dispensing of single dosage units and mitigate the problem of excess stocks and disposal at long term care facilities.

BUSINESS CARDS – BOARD MEMBERS

Director Kendall Lynch stated Assistant Commissioner Robert Gowan advised that the Department will no longer print business cards for regulatory board members.

**REFUND POLICY
DEPARTMENT OF COMMERCE & INSURANCE
REGULATORY BOARDS DIVISION**

As related to Refunds, the following is the Policy to be used by the various agencies within the Division of Regulatory Boards of the Department of Commerce and Insurance.

1. A request for refund less than \$50.00 must be accompanied by a written request from the applicant/registrant. Exception: Statutorily authorized refunds to individuals who do not meet licensing requirements.
2. Documentation supporting the refund will be attached to the refund form. Example: If the reason for the refund is a duplicate payment, copies of both validations must be attached.
3. A request for a refund with a deposit date over 120 days must have an additional explanation.

This Policy supersedes previous policy.

Effective this 8th day of January, 2004.

Robert Gowan, Assistant Commissioner

Dr. Sheila Mitchell motioned to **accept** the refund policy; seconded by Dr. Bob Mitchell. All were in favor and the motion carried.

ELECTRONICALLY TRANSMITTED PRESCRIPTIONS

Dr. Craig Marcus expressed concerns with the Board of Pharmacy's policy statement regarding electronic signatures on prescriptions without any subsequent physician signatures or initials. Dr. Marcus stated there is nothing to prohibit the patient from duplicating the prescription once it is handed to and brought into the pharmacy from the patient. In July 22 – 23, 2003, the Board adopted an electronically-generated signature statement in which the prescriptions can be transmitted directly from the prescriber's computer to the pharmacist's computer, or directly from the prescriber's computer to the pharmacist's facsimile machine or a printed prescription generated by the prescriber's computer and handed to the patient.

**EDWARD GRANGER, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
KNOXVILLE, TN**

Dr. Edward Granger appeared before the Board along with advocates, Dr. Kenny Archer with TPRN and Mr. Eric Amburgey with Cornerstone to request the reinstatement of his pharmacist license. Director Kendall Lynch stated in September, 1994, Dr. Granger surrendered his license due to chemical dependency and was reinstated in November, 1994, with five (5) year's probation. In August, 1998, Dr. Granger relapsed and surrendered his license to practice. On May 28, 2003, Dr. Granger submitted a formal request regarding the requirements for reinstatement of his pharmacist license. Director Lynch stated Dr. Granger met the requirements of Rule 1140-1-.07 (3) (b) as he successfully completed the Jurisprudence Exam in August, 2003. Dr. Kenny Archer stated Dr. Granger was in compliance with TPRN requirements. Mr. Eric Amburgey stated Dr. Granger set an example while at Cornerstone and advocates on his behalf. After board discussion, Dr. Robert Mitchell motioned:

1. Respondent does hereby agree to the reinstatement of license number 5857 with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years, from **January 20, 2004 to January 20, 2009.**

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Ronald Murff, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation

of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (i) If the license has been inactive, delinquent, suspended or revoked: **(ii) One (1) year to not more than five (5) consecutive years, the pharmacist shall:**

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education;
- III. Successfully complete the jurisprudence examination;
- IV. Pay all cumulative license renewal fees and any applicable penalties;
- V. Complete a period of pharmacy internship in Tennessee.

B. For more than three (3) consecutive years but not more than five (5) consecutive years, three hundred twenty (320) hours within one hundred eighty (180) consecutive days.

Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

**STEVEN DUKE, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
KNOXVILLE, TN**

Dr. Steven Duke appeared before the Board to petition for the reinstatement of his pharmacist license. Dr. Kenny Archer with TPRN and Mr. Eric Amburgey with Cornerstone were in attendance to advocate on his behalf. Director Kendall Lynch stated in June, 2003, Dr. Duke was suspected of using alcohol while on the job and forging a prescription for Oxycontin by increasing the amount of the prescription. In July, 2003, Dr. Duke signed a Consent Order for the surrender of his pharmacist license. In January, 1993, Dr. Duke voluntarily sought help through the TPRN network and attended the Metro Atlantic Recovery program in Atlanta for six (6) months. Dr. Duke completed the two (2) year PRN program in 1995 and the five (5) year contract with the Tennessee Board of Pharmacy in 1998. Dr. Kenny Archer stated Dr. Duke is compliant with the requirements of TPRN and seems to be content and at peace with himself. Mr. Eric Amburgey stated Dr. Duke was compliant with the program requirements of Cornerstone. After board discussion, Dr. Sheila Mitchell motioned:

1. Respondent does hereby agree to the reinstatement of license number **6678** with the following probationary conditions. Said probation shall remain in effect for a period of ten (10) years, from **January 20, 2004 to January 20, 2014.**

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Randy Pardue, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily issues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however,

after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

- (i) If the license has been inactive, delinquent, suspended or revoked: **(i) Less than one (1) year, the pharmacist shall:**

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education; and
- III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

**WILLIAM SCANDLYN, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
HARRIMAN, TN**

Dr. William Scandlyn appeared before the Board to request consideration for the reinstatement of his pharmacist license. Advocating on his behalf were Dr. Kenny Archer with TPRN and Mr. Eric Amburgey with Cornerstone. Director Kendall Lynch advised in July, 2003, our office received notification that Dr. Scandlyn may have been arrested for stealing. Dr. Scandlyn was charged with felony theft over \$1,000. Dr. Lynch stated no court date has been set. Dr. Scandlyn is making restitution with his employer. Dr. Kenny Archer with TPRN stated Dr. Scandlyn was compliant with the terms of his contract and has completed the 90/90 meetings. Mr. Eric Amburgey with Cornerstone Recovery advised Dr. Scandlyn has a very supportive network in place and is in compliance with the program. After board discussion, Dr. Julie Frazier motioned:

1. Respondent does hereby agree to the reinstatement of license number **8302** with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years, from **January 20, 2004 to January 20, 2009**.

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Frances Roark, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence

of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

(g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;

(h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

(i) If the license has been inactive, delinquent, suspended or revoked: **(i) Less than one (1) year, the pharmacist shall:**

- I Provide written notice requesting an active license;
- II Satisfy all past due continuing pharmaceutical education; and
- III Pay all cumulative license renewal fees and any applicable penalties.

Dr. Forrest Parmley seconded the motion. All were in favor and the motion carried.

**CHUCK ALVERSON, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
ETOWAH, TN**

Dr. Chuck Alverson was in appearance before the Board to request reinstatement of his pharmacist license, along with advocates Dr. Kenny Archer with TPRN and Mr. Eric Amburgey with Cornerstone. Director Kendall Lynch stated in October, 2003, Dr. Alverson voluntarily admitted himself to the Peach-Ford Center in Atlanta for alcohol abuse. In November, 2003, Dr. Alverson entered Cornerstone for treatment and requested the Board to place his license in “inactive” status. Mr. Eric Amburgey advised Director Lynch in January, 2004, that Dr. Alverson was ready to appear before the Board but had not completed the 90/90 meetings. Mr. Eric Amburgey stated Dr. Alverson’s discharge date is February 2, 2004. Dr. Kenny Archer stated Dr. Alverson has the advocacy of TRPN. After board discussion, Dr. Sheila Mitchell motioned:

1. Respondent does hereby agree to the reinstatement of license number **4100** with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years, from **February 2, 2004 to February 2, 2009.**

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent’s primary physician, Thomas Edwards Williams, MD, except in the case of an emergency or upon a proper referral from the Respondent’s primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent’s primary physician each time the Respondent changes primary physicians.
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the

Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;

- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;

- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (i) If the license has been inactive, delinquent, suspended or revoked: **(i) Less than one (1) year, the pharmacist shall:**
 - I. Provide written notice requesting an active license;
 - II. Satisfy all past due continuing pharmaceutical education; and
 - III. Pay all cumulative license renewal fees and any applicable penalties.

In addition to the above requirements, Dr. Sheila Mitchell requested random breathalyzer tests be conducted. Dr. Julie Frazier seconded the motion. Dr. Reggie Dilliard recused himself from voting. The motion carried.

COMPLAINTS/LEGAL REPORT

1. Case No.: L03-PHR-RBS-200316640

The complaint alleges that the Respondent diverted legend drugs and controlled substances from his employer. The Respondent admitted that during his internship he stole some legend drugs and Schedule II Controlled Substances; however this was not brought to the Board’s attention until after the Respondent was licensed. The Respondent had a substance abuse evaluation at our request which stated that the Respondent was not addicted, but may be risk for addiction because of his family history and that he did not have to participate in a 12-step program. All urine screens and breathalyzer tests were negative. The evaluation also recommended that the Respondent enter into a contract with the Board.

Recommendation: Consent Order with a five (5) year term of probation with the usual terms and conditions (without TPRN Advocacy and with a provision which states that the Respondent will not fill any prescriptions for himself or his family members).

Dr. Julie Frazier motioned to **issue a Consent Order with a term of probation for three (3) years with the usual terms and conditions as stated by counsel.** Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

2. Case No.: L03-PHR-RBS-200316028

The complaint alleges that the Respondent was diverting high-priced legend drugs from his employer. Shortly after this complaint was opened the Respondent was arrested for selling controlled substances to an undercover police officer. Before the charges could be adjudicated, the Respondent committed suicide. In an effort to wrap up this matter, our investigators have conducted inventories of the pharmacies allegedly involved with the Respondent's criminal activity.

Recommendation: Dismissal

Dr. Shelia Mitchell motion to **accept counsel's recommendation;** seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

3. Case No.: L04-PHR-RBS-200316536

The Complainant alleges that her name was erroneously placed on the label of her daughter's rescription for Ceftin 250 mg. The DPh (RG) admits that the incorrect label was placed on the prescription. When the Complainant's husband brought in the prescription, he filled out a patient information sheet and handed the technician an insurance card. The technician thought the husband said that the insurance card belonged to the patient, so the tech assumed that the name on the patient information sheet was a "nickname" and proceeded to use the name on the insurance card. The Complainant noticed the error when she picked up the prescription and before she left the pharmacy. The pharmacist corrected the error. A verbal exchange then ensued between the DPh (RG) and the Complainant and the Complainant also thought that the other DPh (DS) present was laughing at her.

Previous Complaints: DPh/PIC (RG): None
DPh (DS): None
Technician: Not yet registered
Pharmacy: None

Recommendation: Letter of Instruction directing the PIC to speak to the technicians about reinforcing practice and procedures about confirming correct patient information.

Dr. Shelia Mitchell motioned to **accept counsel's recommendation;** seconded by Dr. Julie Frazier. All were in favor and the motion carried.

4. Case No.: L04-PHR-RBS-200316795

The Complainant alleges that the pharmacy lost her insurance card and believes that her privacy has been violated because her social security number was on the card. The Complainant states that the technician asked to keep her card to verify information. The DPh (PIC) states that although they will keep an insurance card if there is an insurance problem, it is their policy to give back insurance cards immediately after registering the information in the computer. In this instance, the DPh (PIC) cannot say whether the card was left with them and whether it was lost. The PIC states that she has looked

January 20 – 21, 2004

throughout the pharmacy including the garbage and she has asked the other pharmacists, but has been unable to locate the card.

Previous Complaints: DPh (PIC): None
Pharmacy: None

Recommendation: Dismissal

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

5. Case No.: L04-PHR-RBS-200316731

The Complainant (the father of the patient, a 21 month-old child) alleges that the following errors occurred: (a). the wrong first name was on the prescription; the patient's last name was correct; (b). the prescription had another person's address on it with a similar sounding name; (c). the label had "0" refills on it when the prescription had "2" refills; (d). the attached warning labels were illegible. Our director spoke to the Complainant who stated that patient counseling was never offered and a DUR was not performed.

The pharmacist states that he overheard the technician ask the Complainant to confirm the first name and assumed that it was put in the computer correctly. As the DPh was filling the prescription, he noted that the spelling of the name on the insurance card and changed the name on the label to conform to the insurance card. When this error was detected by the Complainant, the DPh corrected it. The DPh response does not address the refill problems or the warning label problems in the complaint.

Previous Complaints: DPh: None
Pharmacy: None

Recommendation: Letter of Warning to DPh for incorrect labeling, violating patient confidentiality and failing to provide proper warnings. Consent Order with a \$250.00 civil penalty for failure to counsel.

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

6. Case No.: L04-PHR-RBS-200317239

The complaint alleges that the registered pharmacy technician was observed (through a video tape) diverting Oxycontin from her employer. The employer had the technician arrested and terminated her employment. The DEA 106 form notes that 300 tablets, 80 mg. were missing and that in an effort to prevent this from occurring in the future, the pharmacist notes that they are installing a third security camera in the dispensing area.

Recommendation: Formal Hearing (Consent Order for surrender of technician registration)

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

7. Case No.: L04-PHR-RBS-200316067

The Complainant alleges that his medication (antibiotic) was erroneously given to another person, the pharmacy staff refused to fill his prescription and that the pharmacy staff was rude and nasty. The pharmacist confirms that the medication was dispensed to the incorrect person because both patients had the same last name, but different first names. The technician who dispensed the prescription states that she repeated both the first and last names to the person who picked up the prescription and was answered affirmatively. The DPh also confirms that she did refuse to fill the prescription until she could contact the other person to confirm the error. Both the DPh and the technician deny being rude and nasty. Also, the DPh and the technician responses do not indicate that any patient counseling was offered.

Previous complaints: DPh: None

Technician: None

Pharmacy: (6/2001, Tech. provided private info. to another party, LOI)

Recommendation: Letter of Warning to the technician for failure to offer patient counseling. A Consent Order with a \$250.00 civil penalty to the DPh (PIC) for failure to counsel.

Dr. Sheila Mitchell motioned to **accept counsel's recommendation and to discuss with the technician on how to prevent from happening in the future.** Mrs. Barbara McAndrew seconded the motion. All were in favor and the motion carried.

8. Case No.: L04-PHR-RBS-200317110

The Complainant alleges that the pharmacy was closed on two (2) occasions and she was unable to pick up her prescriptions. On the first occasion, the Complainant was told that the store was closed because the pharmacist was sent to another store. On the second occasion, the Complainant was told that there was no pharmacist there because there was a shortage of pharmacists on staff. When the Complainant went to another store within the same chain to get her prescription filled, the pharmacy refused to fill the prescription because it was filled at another store; however, they offered the Complainant a three (3) day supply. The District manager responds that they are experiencing a shortage of pharmacists. On the weekend of the incident, pharmacist staffing was a problem at two (2) different locations and they elected to staff the busiest location in order to serve more people. The District Manager indicates that he is very concerned about this problem and they are making every effort to bring pharmacists in from other areas of the state.

Previous complaints: Pharmacy: None

Recommendation: Dismissal

Dr. Sheila Mitchell motioned to **accept counsel's recommendation;** seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

9. Case No.: L04-PHR-RBS-200315582

The Complainant alleges that the D.Ph. refused to call her child's physician to get a refill for the child's prescription for Albuterol Solution. The Complainant called another pharmacy in the same corporate family and she was provided with the prescription. The pharmacist states that the Complainant called the pharmacy at 2A.M. and wanted a refill for the child's inhaler; there were no refills on the

January 20 – 21, 2004

prescription. The pharmacist told the Complainant that he would call the doctor on Monday and that if she wanted the prescription sooner, she could call the doctor.

The Complainant also alleges that on a separate occasion, the pharmacy was unable to supply her child's Medrol which was attributed to a manufacturer's shortage and a backlog of the medication. The Complainant alleges that the pharmacy refused to call the company about this problem. The PIC responded that the brand name Medrol was backordered for several months and provides us with copies of invoices in support of this response. The PIC states that the Complainant refused the generic equivalent because she claimed that the child was allergic to generics. The pharmacy made frequent calls to the wholesaler inquiring about the availability of the Medrol, but that the pharmacy did not call the manufacturer until the pharmacy received the request from the child's social worker. The Medrol was ordered and the prescription was filled when the medication became available.

Previous complaint: Ph: None

Pharmacy: (2/2002, misfill, LOI)

Recommendation: Dismissal with a letter to the D.Ph. informing him that pursuant to Tenn. Code Ann. §63-10-407 he could have offered to supply the Complainant with a 72 hour supply of the medication.

Dr. Julie Frazier motioned to **accept counsel recommendation**; seconded by Mrs. Barbara McAndrew. All were in favor and the motion carried.

10. Case No.: L04-PHR-RBS-200315716

The Complainant alleges that the patient's prescription for Humulin R 100 was mistakenly filled with Humulin R 500. The Complainant states that she had to call the paramedics three (3) times to increase her blood sugar level which had dropped to twenty-eight (28). The Complainant also claims that she called the pharmacy and the pharmacy technician assured her that the prescription was correct. I cannot determine from the complaint if the Complainant called the pharmacy before during or after the need to call the paramedics.

Our investigation revealed that the misfill occurred; the copies of the prescription container and labels indicated that the error was made.

The DPh states that although the prescription was filled and dispensed when he was working there, neither he nor the pharmacy technician (JR) remember getting insulin for that prescription. The DPh hypothesizes that another technician (RB) who was working that day may have retrieved the wrong insulin without getting the pharmacist to perform the final verification. The DPh states that since this incident, it is his policy to put a label on the drug and then put it in the refrigerator so that the technician will be able to retrieve the drug by the person's name and then the technician will have it checked by the pharmacist. The DPh also states that none of the technicians recall speaking to the Complainant and informing her that the prescription was correct.

Previous complaints: DPh: (5/2000, impaired, 5 yrs probation)

DPh (PIC): None

Technician (RB): None (Not yet registered)

Pharmacy: None

January 20 – 21, 2004

Recommendation: Letter of Warning to the PIC to conduct an in-service training program to review dispensing procedures and provide the Board with proof of the training within ten (10) days after the training occurred along with a list of the employees who attended the session.

Dr. Sheila Mitchell motioned to **accept counsel's recommendation and to issue a Consent Order with a civil penalty of \$250 for failure to perform the final verification.** Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

11. Case No.: L03-PHR-RBS-200315585

The Complainant alleges that her prescription for Etodolac ER was shorted by ten (10) tablets. When the Complainant left the pharmacy, she realized the error. The Complainant returned to the pharmacy and she was given the remainder of the pills. The DPh states that the error occurred because of an "honest mistake" and that he will work harder to prevent it from happening in the future.

Previous complaints: DPh: None

Pharmacy: None

Recommendation: Letter of Instruction

Dr. Reggie Dilliard motioned to **dismiss** the complaint; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

ADJOURNMENT

Dr. Julie Frazier motioned to adjourn the meeting on Tuesday, January 20, 2004 at 4:15 p.m. CST; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

RECONVENED

The Board of Pharmacy reconvened on Wednesday, January 21, 2004 at 9:00 a.m. CST in Room 160 of the Davy Crockett Tower. President Robert Shutt called the meeting to order. All members were present.

**THURSTON MOORE, DPH
DDM PHARMACY
220 VENTURE CIRCLE
NASHVILLE, TN 37228**

Dr. Thurston Moore is requesting to be pharmacist in charge at DDM Pharmacy. Director Kendall Lynch stated in Dr. Moore's reinstatement order, he shall not serve as PIC of any pharmacy unless

approved by the Board. Dr. Robert Mitchell motioned to **approve** the PIC request; seconded by Dr. Sheila Mitchell. Dr. Julie Frazier recused herself. The motion carried.

ADJOURNMENT

Dr. Forrest Parmley motioned to adjourn the Board of Pharmacy meeting on Wednesday, January 21, 2004 at 10:30 a.m. CST; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

Respectfully submitted,

Robert Shutt, President

Kendall M. Lynch, Director